**DISTRICT COURT OF THE VIRGIN ISLANDS**
**DIVISION OF ST. THOMAS AND ST. JOHN**

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| **RICHARD VENTO, LANA VENTO, GAIL VENTO, RENEE VENTO, NICOLE MOLLISON,** | |
| **Plaintiffs,** | **Civil No. 2009-174** |
| **v.** | |
| **DUANE CRITHFIELD, KEITHLEY LAKE, ALLIANCE HOLDING CO., LTD., ALLIANCE ROYALTIES, LLC, ALLIANCE ROYALTIES, INC., WESTMINISTER, HOPE, & TURNBERRY, LLC, WESTMINISTER, HOPE, & TURNBERRY, LTD., FIRST FIDELITY TRUST, LTD., FIDELITY INSURANCE CO. LTD., OFFSHORE TRUST SERVICES, LLC, CITADEL INSURANCE CO., LTD., ABC COMPANIES, JAMES DUGGAN, DUGGAN BERTSCH, THOMAS HANDLER, HANDLER THAYER,LLP, STEVEN THAYER, AP HOLDINGS, LTD., CITADEL INSURANCE CO., LTD., FORTRESS FAMILY OFFICE GROUP, LLC, FOSTER & DUNHILL, LTD, WATERBERRY, LTD., AXA HOLDINGS, CO., BPS INTERNATIONAL, LLC, NEW HOPE HOLDINGS, LTD., OFFSHORE TRUST SERVICES, LLC., STEPHEN P. DONALDSON,** | |
| **Defendants.** | |

**APPEARANCES:**

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**MEMORANDUM OPINION**

**GÓMEZ, J.**

Before the Court is the motion of Duane Crithfield; Keithley Lake; Keithley Holding Co., Ltd.; Alliance Royalties, Inc.; Fidelity Insurance Co., Ltd.; First Fidelity Trust, Ltd.;

and Westminster, Hope, & Turnberry, Ltd. (the "Alliance Movants") for reconsideration of the Court's denial of their motion to vacate the Arbitrator's Amended Interim Award on Breach of Settlement Agreement and Amended Final Award on Breach of Settlement Agreement. Also before the Court is the motion of Richard Vento, Lana Vento, Gail Vento, Renee Vento, and Nicole Mollison to lift the stay in this case and confirm the arbitration awards.

## I. FACTUAL AND PROCEDURAL BACKGROUND

Richard Vento, Lana Vento, Gail Vento, Renee Vento, and Nicole Mollison (collectively the "Ventos") filed this action on December 4, 2009.

On March 9, 2014, the Ventos filed a First Amended Complaint. The First Amended Complaint asserts claims against Duane Crithfield; Stephen P. Donaldson; and Keithley Lake, all individually and doing business as and associated with the following companies: Alliance Holding Co., Ltd.; Alliance Royalties LLC; Alliance Royalties INC.; Westminster, Hope & Turnberry LLC; Westminster, Hope & Turnberry Ltd.; First Fidelity Trust Ltd.; Fidelity Insurance Co. Ltd.; Foster & Dunhill Ltd. and its successors in interest; Fortress Family Office Group LLC; Offshore Trust Services LLC; Citadel Insurance Co., Ltd.; BPS International LLC; Waterberry Ltd.; AXA Holdings

Co.; AP Holdings, Ltd.; New Hope Holdings Ltd.; John Doe Defendants; ABC Companies; all of which are also named as party defendants; Handler Thayer & Duggan, L.L.C. (HTD); Handler Thayer, L.L.P; Duggan Bertsch, L.L.C; James M. Duggan; Thomas J. Handler; and Steven J. Thayer.

Count One of the First Amended Complaint asserts violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 *et seq*, against Duane Crithfield ("Crithfield"); Stephen P. Donaldson ("Donaldson"); Keithley Lake ("Lake"); Thomas J. Handler ("Handler"); Steven J. Thayer ("Thayer"); and James M. Duggan ("Duggan"). Count Two alleges violations of the Virgin Islands Criminally Influenced and Corrupt Organizations Act, V.I. Code Ann. tit. 14, § 601 *et seq.*, against Crithfield; Donaldson; Lake; Handler; Thayer; and Duggan. Count Three alleges a wrongful taking and wrongful detention claim against all of the defendants. Count Four asserts personal liability for conversion against Crithfield; Donaldson; Lake; Handler; Thayer; and Duggan. Count Five alleges conspiracy against all of the defendants. Count Six alleges fraud, deceit, and conspiracy to defraud against all of the defendants. Count Seven alleges breach of fiduciary duty against Crithfield; Donaldson; Lake; and BPS International, LLC ("BPS"). Count Eight alleges aiding and abetting the breach of fiduciary

duty against Crithfield; Donaldson; Lake; and BPS. Count Nine alleges fraudulent conveyance of assets against all of the defendants.

In general, the Ventos allege that the defendants engaged in an elaborate scheme to induce the Ventos to transfer control of over $30 million of family assets to various irrevocable, offshore trusts in Nevis, W.I. These trusts were established, ostensibly, for estate planning, asset protection, and tax purposes. It is alleged that certain of the defendants, who controlled these trusts, used trust funds to purchase financial products and services from related entities or entities those defendants controlled, all the while charging excessive and unauthorized fees and commissions, resulting in damages to the Ventos.[1]

**1. The Settlement Agreement**

On September 26 and 27, 2011, the parties participated in a mediation and settlement conference in Miami, Florida. That

[1] As part of this alleged scheme, certain of the individual defendants targeted wealthy families, like the Ventos, by marketing wealth management seminars in the Bahamas and elsewhere, which promoted complex tax mitigation and asset protection strategies. To achieve these advantages, however, the Ventos and others, allegedly were required to cede control over their assets to offshore trusts, established in each of their names, which were controlled by certain of the defendants. (*See, e.g.,* Opposition to Motion to Dismiss for Lack of Personal Jurisdiction, ECF No. 285, at 2-4.) It is alleged that once these assets were transferred, they became "irretrievably trapped in elaborate, illiquid, offshore arrangements," and then "slowly [bled] dry by charging excessive, unauthorized, and undisclosed commissions and fees." (*Id.* at 3.)

mediation resulted in a Settlement Agreement, effective September 27, 2011 ("Settlement Agreement"). (ECF No. 390-27.)

The Ventos entered into the Settlement Agreement with the following defendants: Duane Crithfield; Stephen P. Donaldson; Keithley Lake; Alliance Holding Co., Ltd.; Alliance Royalties LLC; Alliance Royalties Inc.; Westminster, Hope & Turnberry Ltd.; First Fidelity Trust Ltd.; Fidelity Insurance Co. Ltd.; Fidelity Management, Ltd.; First Fidelity Trust Company, Ltd.; Foster & Dunhill Ltd. and its affiliated GBI, Offshore Trust Services, Inc.; DMM, LLC; WHT CDO, LLC; and all additional affiliates, subsidiaries, and entities related to or owned by Alliance Holding Company, Ltd. (collectively the "Settling Alliance Entities").

Among other things, the Settlement Agreement settled or partially settled other disputes between and among some of the parties (and others not named in this action) in this and other jurisdictions. The Ventos and the Settling Alliance Entities agreed to dismiss a related case in this Court, *Silly Point, Ltd, et al. v. Richard Vento, et al.*, Civil No. 3:11-CV-0086 (complaint filed Aug. 4, 2011), as well as related cases in Anguilla and Nevis. (Settlement Agreement, ECF No. 427-1, at ¶¶ 2.3, 2.4, 4.7.) They also agreed to dismiss certain claims asserted in a Texas case, once certain conditions were met.

(*Id*. at ¶ 2.2 (referring to *Compass Royalty Management, LLC v. Alliance Royalties, LLC et al.,* Cause No. CC-09-02916-B, in Dallas County Court at Law No. 5.)

The Settlement Agreement did not settle the claims raised in this case. (*Id.* at ¶ 2.5.) It also did not affect claims raised in another related action, also pending in this Court, *Vento, et al. v. Handler, Thayer & Duggan, LLC, et al*, Civil No. 3:09-CV-0155 (complaint filed Nov. 2, 2009). The parties dismissed that related action on July 17, 2014.

**2. The Arbitration Agreement**

On August 13, 2012, the Ventos entered into an Arbitration Agreement with the following defendants: Duane Crithfield; Stephen P. Donaldson; Keithley Lake; Alliance Holding Co., Ltd.; Alliance Royalties LLC; Alliance Royalties Inc.; Westminster, Hope & Turnberry LLC; Westminster, Hope & Turnberry Ltd.; First Fidelity Trust Ltd.; Fidelity Insurance Co. Ltd.; Foster & Dunhill Ltd. and its successors in interest; Fortress Family Office Group LLC; Offshore Trust Services LLC; Citadel Insurance Co., Ltd.; Waterberry Ltd.; AXA Holdings Co.; AP Holdings, Ltd.; and New Hope Holdings Ltd. (collectively the “Alliance Defendants”).

The Ventos and the Alliance Defendants agreed “to submit all issues remaining between and amongst them, including

compliance with the terms of the Partial Settlement Agreement . . . to final binding arbitration." (Arbitration Agreement, ECF No. 427-2, at 3.) The Arbitration Agreement appointed Lawrence M. Watson, Jr. as arbitrator. It also provided, "The Award of the Arbitrator shall be binding upon the parties without any right of appeal. The Parties waive their right to a reasoned Award." (*Id*. at 7.) The parties to the Arbitration Agreement further agreed to be "bound by the decision of the Arbitrator" and that "no procedural or substantive objections to enforcement will be raised by any Party to the Arbitration Award . . . ." (*Id*.)

**3. The Stay Order**

Pursuant to the Arbitration Agreement,[2] the Ventos and the Alliance Defendants jointly moved to stay this action pending arbitration. The non-arbitrating defendants, Handler, Thayer & Duggan, L.L.C.; Handler Thayer, L.L.P.; Duggan Bertsch, L.L.C.; James Duggan; Steven Thayer; Thomas Handler; and BPS International, L.L.C., (collectively "the Attorney Defendants")[3] also moved to stay those claims against them pending arbitration of the claims asserted against the Alliance Defendants.

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[2] Arbitration Agreement, ECF No. 427-2, at 5.

[3] The Ventos later dismissed their claims against the Attorney Defendants. (*See* ECF No. 415.)

On August 29, 2012, the Court entered an Order staying this matter in its entirety pending arbitration ("Stay Order"). (*See* ECF No. 364.) The Stay Order removed this case from the active trial docket, placed it on the civil suspense docket, and ordered that the parties advise the Court "when the matter before an arbitrator is *concluded*." (Stay Order, ECF No. 364, at 15 (emphasis added)).

Thereafter, arbitration began on July 22, 2013. Several days of hearings followed.

**4. Phase I**

The arbitrator decided issues presented by the parties in different phases. On August 23, 2013, the arbitrator issued a ruling labeled as "Final Award" (the "Phase I Award"). The Phase I Award found for defendants Foster & Dunhill Ltd.; Stephen P. Donaldson; Fortress Family Office Group, LLC; Citadel Insurance Co., Ltd.; AP Holdings, Ltd.; New Hope Holdings , Ltd. (collectively the "Non-liable Alliance Defendants") and against the Ventos.[4] The arbitrator made an award of "0" as to the claims between and among the Non-Liable Alliance Defendants and the Ventos. (Phase I Award, ECF No. 376-4, at 1.)

[4] The arbitrator found against the "Vento Entities," which included the Ventos and other entities not parties to this action.

The Phase I Award also addressed the claims between the Ventos and Alliance Holding Co. Ltd; Alliance Royalties, LLC.; Alliance Royalties, Inc.; Westminster, Hope and Turnberry, LLC.; Westminster, Hope and Turnberry Ltd.; Waterberry, Ltd.; Offshore Trust Services, LLC.; AXA Holdings Co.; First Fidelity Trust Ltd.; Fidelity Insurance Co. Ltd.; Duane Crithfield, individually; and Keithley Lake, individually (the "Liable Alliance Defendants"). In the Phase I Award, the arbitrator found the Liable Alliance Defendants jointly and severally liable to the Ventos and entered an award of $7,419,000. (*Id.* at 2.)

On October 15, 2013, the Ventos filed conflicting motions with the arbitrator and this Court. Before this Court, they moved for an order enforcing the judgment and confirming the Phase I Award. Before the arbitrator, they asked that the Phase I Award be modified.[5] (*Compare* Motion to Enforce Judgment, ECF No. 375, *with* Motion to Correct, Modify and Amend Arbitrator's Final Award, ECF No. 376-5.) In response, the Liable Alliance Defendants moved to enforce the Stay Order, on the ground that

[5] The Motion to Enforce Judgment appeared to be internally inconsistent. In one paragraph it admitted that "Plaintiffs have filed a motion to Correct, Modify and Amend the [F]inal [A]ward." In the next, it argued that "there are no grounds for modifying, correcting, or vacating the award." (Memorandum in Support of Motion to Enforce Judgment, ECF No. 376, at 5.)

arbitration was not complete. The Liable Alliance Defendants also filed a motion for post-award relief with the arbitrator.

**5. Phase II**

On November 25, 2013, the arbitrator ruled on these post-award motions and issued an award captioned as the "Amended Final Award" (the "Phase II Award"). The Phase II Award included some of the modifications sought by the Ventos. It also retained the arbitrator's findings as to liability and damages against the Liable Alliance Defendants. (*See generally* Phase II Award, ECF No. 390-26.)

On November 27, 2013, the Ventos moved this Court to confirm and enforce the Phase II Award. (*See* ECF No. 389.) However, in a supplemental motion and other pleadings before the arbitrator, the Ventos sought an "additional ruling," distinct from the Phase II Award, to address issues of alleged breaches of the Settlement Agreement. (*See* Supplementary Motion, ECF No. 390-9, at 8.) On December 10, 2013, the Ventos filed an additional claim with the arbitrator charging the Alliance Defendants' with breach of the settlement agreement.

**6. Phase III: Breach of Settlement Claims**

The Alliance Defendants objected to the Ventos's request for further arbitration. They filed a motion to dismiss with the arbitrator, arguing that he lacked jurisdiction to make

additional rulings or consider additional claims because the Phase II Award concluded arbitration. (*See* ECF No. 418-5.) In an apparent reversal of the position taken in this Court, the Ventos argued to the arbitrator that arbitration was not yet finished, as there were still additional rulings to be made.

On January 3, 2014, the arbitrator agreed with the Ventos and found that arbitration was not yet concluded. (*See* ECF No. 418-6.)

The Alliance Defendants then filed a motion to reconsider the Arbitrator's January 3, 2014 Order. The arbitrator denied that motion. (*See* ECF No. 418-8.) After that adverse ruling, the Alliance Defendants "reluctantly concluded that the arbitrator would not listen to reason," and withdrew from arbitration and any further participation in arbitration proceedings. (*See* Motion to Vacate, ECF No. 418, at 3; *see also* Letter dated January 21, 2014 from Gordon Rhea to Lawrence Watson, ECF No. 418-9 (informing arbitrator that Alliance Defendants were not obligated to pay for services rendered in any further arbitration proceedings, as arbitration was concluded by the Phase II Award).)

The arbitrator continued to hold hearings and enter awards nonetheless. He entered an Interim Award on Breach of

Settlement Agreement on May 1, 2014; a Final Award on Breach of Settlement Agreement on May 29, 2014; an Amended Interim Award on Breach of Settlement Agreement on July 22, 2014; and an Amended Final Award on Breach of Settlement Agreement on July 22, 2014.

The Amended Interim Award found Alliance Holding Company, Ltd.; Alliance Royalties, LLC; Alliance Royalties, Inc.; Fidelity Insurance Company, Ltd.; First Fidelity Trust, Ltd.; First Fidelity Trust Company, Ltd.; Foster & Dunhill, Ltd.; Westminster Hope & Turnberry, Ltd.; Offshore Trust Services, Inc.; Duane Crithfield, individually; Keithley Lake, individually; and Stephen P. Donaldson, individually (collectively the "Liable Settlement Parties"), jointly and severally liable to the Ventos and awarded an additional $1,375,040.33 to the Ventos. (ECF No. 427-42.) The Amended Final Award found the Liable Settlement Parties jointly and severally liable to the Ventos and awarded an additional $919,199.91 to the Ventos. (ECF No. 427-43.)[6]

On September 30, 2014, the Court issued an order upholding

[6] Both of these awards were also awarded against Fidelity Management, Ltd.; DMM, LLC; WHT CDO, LLC; and "[a]ll additional affiliates, subsidiaries, and entities related to or owned by Alliance Holding Company, Ltd." None of these parties are present in this action.

the stay and denying without prejudice various motions that sought to confirm or vacate various arbitration awards. The Court also ordered the parties to file a stipulation or report from the arbitrator on whether arbitration had concluded.

Thereafter, the Ventos filed a report from the arbitrator. In that report, the arbitrator informed the Court that arbitration had concluded. The last award was issued on July 22, 2014. On July 31, 2014, the Alliance Movants filed a motion to vacate the July 22, 2014, Amended Interim Award on Breach of Settlement Agreement and July 22, 2014, Amended Final Award on Breach of Settlement Agreement (the "motion to vacate"). (ECF No. 417.)

The Ventos then moved the Court to reopen the case and confirm the arbitration awards (the "motion to enforce" or "motion to confirm"). (ECF No. 426.)

On March 31, 2015, the Court denied the motion to vacate. (ECF No. 434.) The Alliance Movants filed an unopposed motion to extend the time to file a motion for reconsideration until May 5, 2015. On May 5, 2015, the Alliance Movant filed a motion for reconsideration asking the Court to reconsider its order denying the motion to vacate. (ECF No. 436.)

## II. ANALYSIS

### A. Extension of Time to File Motion for Reconsideration

Local Rule of Civil Procedure 7.3 ("Rule 7.3") governs motions for reconsideration. *See* LRCi 7.3. Rule 7.3 provides that

> A party may file a motion asking the Court to reconsider its order or decision. Such motion shall be filed within fourteen (14) days after the entry of the order or decision unless the time is extended by the Court. Extensions will only be granted for good cause shown. A motion to reconsider shall be based on:
>
> 1. intervening change in controlling law;
>
> 2. availability of new evidence, or;
>
> 3. the need to correct clear error or prevent manifest injustice.

*Id.*

The Alliance Movant's motion to dismiss was filed more than 14 days after the Court issued its order. However, before the fourteen days expired, the Alliance Movants filed a motion seeking an extension of time to file the motion for reconsideration. In that motion, the Alliance Movants assert that there is good cause for an extension of time "because of the need to obtain additional information regarding parallel litigation ongoing in the state courts of Texas regarding the same arbitration awards at issue in this action." (ECF No. 435, at 2.) The Court need not determine whether that constitutes

good cause because, even assuming *arguendo* that the Court were to grant the extension, the Court would deny the motion for reconsideration for the reasons stated below.

**B. Motion for Reconsideration**

The defendants moved to vacate the arbitration agreement on several grounds. They argue that the Ventos assigned their rights under the Settlement Agreement to DLNGR NR LLP ("DLNGR") and were not entitled to arbitrate any breach of the Settlement Agreement. The Court denied the motion to vacate.

The defendants now argue that the Court should reconsider its order and vacate the arbitration judgement because "[f]urther developments in the Texas interpleader litigation demonstrate that the Vento Plaintiffs assigned their interests in the Settlement Agreement to DLNGR NR LLP but have refused to divulge any information relating to the assignment." (ECF No. 437, at 2.) They also assert that the "Court erred in its decision that it was not established that the Vento plaintiffs had assigned all their interests in the Settlement Agreement prior to the arbitration proceedings regarding the alleged breaches of the Settlement Agreement." *Id.*

**i. Developments in the Texas Action**

In an action in Texas (the "Texas Action"), DLNGR attempted to recover royalties in an interpleader action. DLNGR asserted

that it was an assignee of the Vento's rights under the Settlement Agreement. That court (the "Texas court") ordered DLNGR to produce the assignment documents. (ECF No. 437-3.)

The Alliance Movants now argue that this Court's order denying the motion to vacate should be vacated because DLNGR did not produce the assignment documents in the Texas Action, even when ordered to do so by the Texas court. The Court does not see how this is relevant to the case at hand and certainly it is not a basis for the Court to reconsider its prior order.

**ii. Newly Discovered Evidence**

The Alliance Movants next argue that the Court's order should be vacated because the Court's conclusions were clearly erroneous.

In the Court's order denying the motion to vacate, the Court held that DLNGR's assertions in the Texas Action were not binding on the parties in this action because the movants had "not directed the Court's attention to any record evidence (1) demonstrating that the relationship between the Ventos and DLNGR requires that the Ventos be bound by DLNGR's admissions; or (2) establishing judicial estoppel." (ECF No. 434, at 20.) The defendants argue that this is clearly erroneous because the Vento Entities are judicially estopped from contradicting

DLNGR's assertion that the settlement agreement was assigned to it.

In support of their argument, the defendants attach evidence of the "Final Judgment Confirming Arbitration Awards" issued by the court in the Texas Action (the "Texas Final Judgment").[7] The Texas Final Judgment was not submitted to the Court before the Court issued its order on the motion to vacate. As such, it is apparent that the defendants' motion seeking reconsideration is more fairly regarded as a motion based on newly discovered evidence, not clear error.

"Evidence is not 'newly discovered' if it 'was [actually] known or could have been known by the diligence of the defendant or his counsel.'" *United States v. Cimera*, 459 F.3d 452, 461 (3d Cir. 2006)(quoting *United States v. Bujese,* 371 F.2d 120, 125 (3d Cir.1967))(alterations in original). Here, it is not clear to the Court that the Texas Final Judgment is newly discovered evidence. The Texas Final Judgment was issued on March 18, 2015, thirteen days before the Court issued its order. Moreover,

[7] The defendants assert that this judgment was not in fact a final judgment because it failed to address all claims pending in the case. The Court need not resolve that issue at this time. Relatedly, the Court need not address whether the Texas Final Judgment is *res judicata* against any of the parties in this action because the Court ultimately agrees with the court in the Texas Action that the arbitration award should be confirmed, except where it has not been established that the Court has jurisdiction to do so.

counsel for the defendants was familiar with the Texas Action.[8] Regardless, even assuming *arguendo* that the Texas Final judgment constitutes newly discovered evidence, vacatur of the Court's denial of the motion to vacate is not appropriate because the Texas Final Judgment does not establish that the Ventos should be bound by DLNGR's assertions or that judicial estoppel is appropriate.

> Courts have observed that "[t]he circumstances under which judicial estoppel may appropriately be invoked are probably not reducible to any general formulation of principle," *Allen,* 667 F.2d, at 1166; accord, *Lowery v. Stovall,* 92 F.3d 219, 223 (C.A.4 1996); *Patriot Cinemas, Inc. v. General Cinema Corp.,* 834 F.2d 208, 212 (C.A.1 1987). Nevertheless, several factors typically inform the decision whether to apply the doctrine in a particular case: First, a party's later position must be "clearly inconsistent" with its earlier position. *United States v. Hook,* 195 F.3d 299, 306 (C.A.7 1999); *In re Coastal Plains, Inc.,* 179 F.3d 197, 206 (C.A.5 1999); *Hossaini v. Western Mo. Medical Center,* 140 F.3d 1140, 1143 (C.A.8 1998); *Maharaj v. Bankamerica Corp.,* 128 F.3d 94, 98 (C.A.2 1997). Second, courts regularly inquire whether the party has succeeded in persuading a court to accept that party's earlier position, so that judicial acceptance of an inconsistent position in a later proceeding would create "the perception that either the first or the second court was misled," *Edwards,* 690 F.2d, at 599. Absent success in a prior proceeding, a party's later inconsistent position introduces no "risk of inconsistent court determinations," *United States v. C.I.T. Constr. Inc.,* 944 F.2d 253, 259 (C.A.5 1991), and thus poses little threat to judicial integrity. See *Hook,* 195 F.3d, at 306; *Maharaj,*

[8] The Court also notes that two of the named parties in the Texas Action are parties to this action.

> 128 F.3d, at 98; *Konstantinidis,* 626 F.2d, at 939. A third consideration is whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped. See *Davis,* 156 U.S., at 689, 15 S.Ct. 555; *Philadelphia, W., & B.R. Co. v. Howard,* 13 How. 307, 335-337, 14 L.Ed. 157 (1851); *Scarano,* 203 F.2d, at 513 (judicial estoppel forbids use of "intentional self-contradiction ... as a means of obtaining unfair advantage"); see also 18 Wright § 4477, p. 782.

*New Hampshire v. Maine*, 532 U.S. 742, 750-51 (2001).

In the Texas Final Judgment, the Texas court granted DLNGR's motion to confirm the arbitration awards. The Texas court did not indicate that it was accepting an assertion by DLNGR that the settlement agreement had been assigned to DLNGR in its entirety. Indeed, there is no evidence that the Texas court accepted DLNGR's assertion that DLNGR was entitled to judgment based on the settlement agreement. To the contrary, the Texas court held that "final judgment on the arbitration awards . . . should be entered in favor of Vento Entities and against the Alliance Entities." (ECF No. 437-4, at 1.) DLNGR is not included in the list of Vento Entities.

Because there is no evidence that the Texas court accepted DLNGR's assertion, the application of judicial estoppel to this action would not be appropriate even if the relationship between the Ventos and DLNGR required that the Ventos be bound by DLNGR's admissions. Moreover, the motion seeking reconsideration

does not challenge the Court's conclusion that there was no record evidence demonstrating that the relationship between the Ventos and DLNGR required that the Ventos be bound by the admissions of DLNGR, a different entity.

Accordingly, even assuming *arguendo* that the Texas Final Judgment is newly discovered evidence, the Court would deny the Alliance Movants' motion for reconsideration.

**C. Lift Stay and Reopen Case**

On August 29, 2012, the Court stayed this case pending the completion of arbitration. (*See* ECF No. 364.) In that order, the Court ordered the parties to "advise the Court when the matter before an arbitrator is concluded." (ECF No. 364, at 15.) The Court also noted "that the case [would] be restored to the trial docket when the action is in a status so that it may proceed to final disposition . . . ." (*Id.*) Thereafter, the parties filed a number of motions to confirm and vacate the arbitration. At the time, it was unclear to the Court whether arbitration had in fact concluded. As such, the Court denied without prejudice the various motions to confirm and enforce the arbitration award and ordered "that no later than October 15, 2014, the arbitrating parties, who have not been dismissed, shall file either a Stipulation or an appropriate report from the arbitrator regarding whether arbitration has been concluded." (ECF No.

424.) On October 8, 2014, the Ventos filed a report of the arbitrator. (ECF No. 425.) In that report, the arbitrator informed the Court that arbitration had concluded. (*Id.*) Accordingly, it is appropriate to lift the stay in this case. The Court will lift the stay and restore the case to the active docket.

**D. Confirm Settlement**

In addition to moving to lift the stay, the Ventos' motion seeks to confirm the arbitration award. Before confirming the arbitration award, the Court must determine whether confirmation is governed by the FAA or the Convention on the Recognition and Enforcement of Foreign Arbital Awards (the "New York Convention"). The New York Convention provides that it "shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought." *Convention Done at New York June 10, 1958*;, T.I.A.S. No. 6997 (Dec. 29, 1970)(Article I(1)). An arbitration award falls under the New York Convention if it "involves property located abroad, envisages performance or

enforcement abroad, or has some other reasonable relation with one or more foreign states." 9 U.S.C. § 202. The New York Convention also applies to awards that are not entirely between citizens of the United States. *Id.*

Here, the arbitration award was issued against a number of entities who are not citizens of the United States. As such, the New York Convention applies. When the New York Convention applies to an action, the domestic Federal Arbitration Act ("FAA") also applies to the extent it is not in conflict with the New York Convention. *Century Indem. Co. v. Certain Underwriters at Lloyd's, London, subscribing to Retrocessional Agreement Nos. 950548, 950549, 950646*, 584 F.3d 513, 523 (3d Cir. 2009).

**1. New York Convention Formalities**

Under Article IV(1) of the Convention, "[t]o obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application supply . . . [t]he duly authenticated original award or a duly certified copy thereof . . . ."

This certification requirement has been interpreted very loosely. Indeed, the Third Circuit has not required the authentication nor certification of an arbitration agreement. *Al-Haddad Bros. Enterprises v. MS Agapi*, 635 F. Supp. 205, 209-

10 (D. Del. 1986) *aff'd sub nom. Al-Haddad Bros. Enterprises v. MS Agapi*, 813 F.2d 396 (3d Cir. 1987). In *Al Haddad Bros. Enterprises v. M/S AGAPI*, the district court affirmed an arbitration award, holding that neither authentication nor certification of the arbitration agreement was necessary. The court reasoned that

> The purpose for requiring submission of the original agreement or a certified copy is to prove the existence of an agreement to arbitrate. Such proof already exists in this case because the Court has determined on several prior instances that the charter party between Al Haddad and Diakan contained a London arbitration provision. Those rulings form sufficient verification of the existence of an arbitration agreement to allow enforcement of the award here.

*Al-Haddad Bros. Enterprises*, 635 F. Supp. at 209-10. On appeal, the Third Circuit affirmed the district court without opinion. *Al-Haddad Bros. Enterprises*, 813 F.2d at 396.

With respect to the arbitration award itself, courts have permitted certification by a member of the arbitration panel or certification by the Director of the New York Regional Office of the American Arbitration Association, and even certification by petitioners' attorney. *See Matter of Arbitration between Cont'l Grain Co. & Foremost Farms Inc.*, No. 97 CIV. 0848 (DC), 1998 WL 132805, at *2 (S.D.N.Y. Mar. 23, 1998)(director of regional office of American Arbitration Association); *Bergesen v. Joseph*

*Muller Corp.*, 710 F.2d 928, 934 (2d Cir. 1983)(member of arbitration panel). Indeed, one court has excused a failure to provide an original or certified copy of the award or agreement because "of the confused nature of the proceedings" and no party contested their validity. *Hewlett-Packard, Inc. v. Berg*, 867 F. Supp. 1126, 1130 (D. Mass. 1994), *vacated on other grounds,* Hewlett-Packard Co. v. Berg, 61 F.3d 101 (1st Cir. 1995).

Here, the Court previously recognized the existence of the arbitration agreement when it stayed the action and neither party contests its express terms. Moreover, the arbitration awards are signed by the arbitrator and neither party contests that those awards were issued. Under these circumstances, the Court finds that the required formalities have been satisfied.

Once these formalities have been satisfied, the Court must confirm the arbitration award unless there are grounds for setting it aside. *See Convention Done at New York June 10, 1958*;, T.I.A.S. No. 6997 (Dec. 29, 1970)(Article V-VI). The New York Convention "specifically contemplates that the [country] in which, or under the law of which, the award is made, will be free to set aside or modify an award in accordance with its domestic arbitral law and its full panoply of express and implied grounds for relief." *See Ario v. Underwriting Members of Syndicate 53 at Lloyds for 1998 Year of Account*, 618 F.3d 277,

292 (3d Cir. 2010), *as amended* (Dec. 7, 2010); *Convention Done at New York June 10, 1958*;, T.I.A.S. No. 6997 (Dec. 29, 1970)(Article I(1).

Here, the arbitration agreement specifies that "the law of the U.S. Virgin Islands will be the 'governing law' for purpose of . . . [the] arbitration process." (ECF No. 361-4 at 4.) As such, this Court may set aside the arbitration award on any ground permitted under the FAA.

**2. Personal Jurisdiction**

A number of defendants have raised objections to personal jurisdiction. A court confirming an arbitration award must have personal jurisdiction over the parties. *See Telcordia Tech Inc. v. Telkom SA Ltd.*, 458 F.3d 172, 178-79 (3d Cir. 2006)("Although the New York Convention does not diminish the Due Process constraints in asserting jurisdiction over a nonresident alien, the desire to have portability of arbitral awards prevalent in the Convention influences the answer as to whether Telkom "reasonably anticipate(d) being haled into" a New Jersey court.")

Here, Alliance Holding Co., Ltd., Alliance Royalties, Inc., Alliance Royalties, LLC, Fidelity Insurance Co., Ltd., First Fidelity Trust, Ltd., Westminster, Hope, & Turnberry, Ltd., and Offshore Trust Services, LLC (collectively, the "Offshore

Defendants") have repeatedly moved to dismiss for lack of personal jurisdiction. The Court initially permitted jurisdictional discovery and denied the motions to dismiss without prejudice. (*See* ECF No. 216.) These parties then reasserted their motion to dismiss for lack of personal jurisdiction (ECF No. 255.) That motion was closed when this case was placed on the suspense docket. The motion was then renewed once the Ventos began seeking to confirm the arbitration award. (ECF No. 388.)

The Offshore Defendants also noted their objection to personal jurisdiction in the Alliance Movants' opposition to the motion to confirm the amended arbitration award.[9] (ECF No. 389 (motion); ECF No. 392 (opposition).) The Court denied the renewed motion without prejudice when it granted a motion to enforce the stay in this case. (*See* ECF No. 424.) In the Ventos' "Second Motion to Enforce Judgment and Confirm" the arbitration awards, (ECF No. 426), the Ventos, in part, renewed their motion to confirm the amended arbitration award, (*See* ECF No. 389).

As previously noted, the Offshore Defendants asserted in their opposition to that motion, (ECF No. 389), that no award should be confirmed against them until the Court establishes that it may exercise personal jurisdiction over them. As such,

[9] The Offshore Defendants are a subset of the Alliance Movants.

the Court finds that the matter of personal jurisdiction must be resolved before confirming the arbitration award.

The Ventos assert that the Alliance Entities have waived any objections to personal jurisdiction by requesting the Court's Appointment and approval of an Arbitrator; seeking Protective Orders and Discovery Schedules from the Court; moving the court to stay these proceedings in favor of the Arbitration Proceedings; and filing a motion to vacate the arbitration award.

It is true that "where a party seeks affirmative relief from a court, it normally submits itself to the jurisdiction of the court with respect to the adjudication of claims arising from the same subject matter." *Bel-Ray Co. v. Chemrite (Pty) Ltd.*, 181 F.3d 435, 443 (3d Cir. 1999). However, the Court is unaware of any court that has held that a motion to vacate an arbitration award seeks affirmative relief such that objections to personal jurisdiction are waived. Indeed, the only authority on the issue indicates the contrary. *See, e.g., World Missions Ministries, Inc. v. Gen. Steel Corp.*, No. CIV. RWT 06-13, 2006 WL 2161851, at *4 n.7 (D. Md. July 28, 2006)("Under the Federal Rules of Civil Procedure, even "filing a counterclaim, compulsory or permissive, cannot waive a party's objections" to personal jurisdiction or venue.

*Networks Corp.,* 399 F.3d 1302, 1308 (Fed.Cir.2005). If General Steel had chosen to substantively oppose confirmation of the arbitration award, it could have done so—either raising arguments in opposition or by a motion to vacate—without compromising its venue defense."); *cf. Matter of Arbitration between InterCarbon Bermuda, Ltd. & Caltex Trading & Transp. Corp.*, 146 F.R.D. 64, 70 (S.D.N.Y. 1993)(holding that a motion to confirm the arbitration award filed in response to a motion to vacate the arbitration award did not waive objections to personal jurisdiction). Similarly, a motion to stay litigation pending arbitration proceedings does not waive objections to personal jurisdiction. *Gerber v. Riordan*, 649 F.3d 514, 519 (6th Cir. 2011)("Defendants' motion for a stay [of litigation pending arbitration] 'does not come close to what is required for waiver or forfeiture' of a personal jurisdiction defense. *Id.; see also Lane v. XYZ Venture Partners, L.L.C.,* 322 Fed.Appx. 675, 678 (11th Cir.2009) (holding that defendants 'did not waive their defense of lack of personal jurisdiction by moving to stay the proceedings').") Moreover, the Offshore Defendants continuously asserted lack of personal jurisdiction. Under these circumstances, the Court does not find that their objections to personal jurisdiction were waived.

The Court also finds that the FAA does not provide the Court with personal jurisdiction. If the parties designate a court to confirm the arbitration award in their agreement, then that court has jurisdiction to confirm the award. *See* 9 U.S.C. § 9. Here, the arbitration agreement makes no such designation of this Court.

In addition, the FAA permits application to the United States court in the district in which the arbitration award was made. *See id.* Here, the record reflects no evidence that the arbitration award was made in the Virgin Islands. As such, neither of the FAA's provisions providing special jurisdiction over motions to confirm arbitration awards apply to this Court.

The Ventos next argue that the objections to personal jurisdiction were waived in the arbitration agreement. In the section of the arbitration agreement titled "Preservations of Jurisdictional Rights and Objections," the arbitration agreement provides that

> nothing herein shall be deemed a waiver of any right to object to, nor a stipulation to submit to, the jurisdiction of any united states federal or state court . . . Notwithstanding the foregoing however in the event there is an arbitration award against any party, the prevailing party shall be entitled to convert that award to a final judgment and seek execution in any jurisdiction where the losing party's assets may be found.

(ECF No. 361-4 at 3.)

The Ventos assert that this provision is properly read as a waiver of jurisdictional objections to a motion to confirm an arbitration award. In contrast, the Offshore Defendants assert that it is only a waiver of personal jurisdiction in jurisdictions where a party has assets.

> In the process of defining the objective intent of the parties, a court must examine the entire agreement. "A writing is interpreted as a whole, and all writings that are part of the same transaction are interpreted together."

*Williams v. Metzler*, 132 F.3d 937, 947 (3d Cir. 1997). (quoting Restatement (Second) of Contracts § 202(2)).

Here, the arbitration agreement provides that the parties signing the agreement "agree[d] to submit all issues remaining between and amongst them, including compliance with the terms of the Partial Settlement Agreement and the Disputed Measure of Royalty Agreement and agree to final binding arbitration pursuant to the terms of this Agreement." (ECF No. 361-4 at 2.) Because all issues between the parties were to be resolved by arbitration, interpreting the second portion of the reservation of rights section--providing for confirmation and execution of the arbitration award--in the manner advanced by the Ventos would remove any meaning from the first portion of that section--providing that the arbitration agreement was not a waiver of

objections to jurisdiction. As such, the Court rejects the Ventos' interpretation of that provision.

Turning now to the interpretation advanced by the Offshore Defendants, the Court finds that interpretation more plausible. The Ventos, as the parties asserting personal jurisdiction, have an obligation to establish personal jurisdiction. *See Mellon Bank (E.) PSFS, Nat. Ass'n v. Farino*, 960 F.2d 1217, 1223 (3d Cir. 1992). A review of the record here indicates that they have not provided any evidence that the Offshore Defendants have assets in the U.S. Virgin Islands. As such, the arbitration agreement does not provide a waiver of personal jurisdiction with respect to confirmation of the arbitration award.

The Court next turns to whether jurisdiction is proper under the long-arm statute and the due process clause. The Ventos, in their "Second Motion to Enforce Judgment and Confirm" the arbitration awards, have not briefed this issue. Looking back though the docket, the Court finds a number of oppositions by the Ventos to motions to dismiss filed by the Offshore Defendants. The Ventos only attached the relevant exhibits to those oppositions in one instance. (*See* ECF No. 391.) In that filing, the Ventos filed hundreds of pages of documents without any citation to those documents or indication of how those

documents establish personal jurisdiction.

"Rule 56 does not impose upon the district court a duty to sift through the record in search of evidence to support a party's opposition to summary judgment . . . ." *Skotak v. Tenneco Resins, Inc.*, 953 F.2d 909, 916 (5th Cir. 1992), *opinion corrected* (Mar. 26, 1992). Similarly, it is not the Court's responsibility to sift through the documents submitted here. As such, the Court will deny the motion to confirm without prejudice to the extent that the Ventos seek confirmation of the arbitration award against the Offshore Defendants.

**3. Other Objections to Confirmation**

9 U.S.C. § 10 provides that a district court may vacate an arbitration award where: (1) "the award was procured by corruption, fraud, or undue means"; (2) "there was evident partiality or corruption in the arbitrators, or either of them"; (3) "the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced"; or (4) "the arbitrators exceeded their powers or so imperfectly executed them that a

mutual, final, and definite award upon the subject matter submitted was not made." 9 U.S.C. § 10.

9 U.S.C. § 11 provides that a district court may modify or correct an arbitration award where: (1) "there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award;" (2) "the arbitrators have awarded upon a matter not submitted to them;" or (3) "the award is imperfect in matter of form not affecting the merits of the controversy." 9 U.S.C. § 11.

Here, the Ventos entered into an arbitration agreement that provided that a prevailing party was entitled to convert an arbitration award into a final judgment. As such, the Court must confirm the arbitration award unless there is grounds for vacatur, modification, or correction of the award. *See* 9 U.S.C. § 9. The Court has rejected the grounds for vacatur asserted in the defendants' motion to vacate. Moreover, no additional grounds for vacatur, modification, or correction of the award have been asserted in the defendants' opposition to the motion to confirm. Accordingly, the Court finds that confirmation of the arbitration award is appropriate as to all parties that the

arbitrator found liable and are currently in this action, other than the Offshore Defendants.

An appropriate judgment follows.

**S_____**
**Curtis V. Gómez**
**District Judge**